

## APPEAL NO. 990761

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 10, 1999. The only issue before him was what is the appellant's (claimant) impairment rating (IR). It is undisputed that the claimant was injured in the course and scope of her employment on \_\_\_\_\_, and that she reached maximum medical improvement (MMI) on March 31, 1992, as certified by Dr. S, the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The hearing officer determined that Dr. S certified that the claimant's IR is four percent, that the claimant waited several years before disputing the IR assigned by Dr. S, that the IR assigned by the designated doctor is not contrary to the great weight of the other medical evidence, that the report of Dr. S was not based on a misdiagnosis or other significant medical mistake, and that the claimant's IR is four percent. The claimant appealed, urged that Dr. S's report was based upon a misdiagnosis and that the reports of the doctors who treated her are the great weight of the other medical evidence contrary to the report of Dr. S, and requested that the Appeals Panel reverse the decision of the hearing officer and have her again evaluated by the designated doctor or decide that her IR is 42% as certified by Dr. H, who performed surgery on her back. The respondent (carrier) replied, stating why it thinks the decision of the hearing officer should be affirmed.

### DECISION

We affirm.

The claimant was injured in the course and scope of her employment when she was hanging clothes on a rack. At the request of the carrier, she was examined by a doctor who certified that she reached MMI with a zero percent IR. The claimant disputed the certification of that doctor and Dr. S was appointed as the Commission-selected designated doctor. In a Report of Medical Evaluation (TWCC-69) dated September 3, 1992, Dr. S certified that the claimant reached MMI in March 1992 with a four percent IR. The claimant disputed the date of MMI and in Texas Workers' Compensation Commission Appeal No. 93056, decided March 1, 1993 (Unpublished), the Appeals Panel affirmed the decision of a hearing officer that the claimant reached MMI on March 31, 1992. The issue of claimant's IR was not before the hearing officer or the Appeals Panel. In Texas Workers' Compensation Commission Appeal No. 950758, decided July 12, 1995, and Texas Workers' Compensation Commission Appeal No. 960587, decided May 6, 1996, the Appeals Panel affirmed decisions of hearing officers that the carrier was not liable for reasonable and necessary costs of lumbar spinal surgery. The claimant testified that Dr. H performed a fusion at L5-S1 in April 1996 and that Medicare paid for the surgery. She said that the Commission approved surgery on her neck and that on January 5, 1998, Dr. M performed a fusion at C4-5 and C5-6. In a TWCC-69 dated July 14, 1998, with attachments, Dr. H stated that the claimant had a fusion at L5-S1 and a fusion at C4-5 and C5-6 and used the combined values chart in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American

Medical Association to assign a 42% IR, consisting of 10% for a specific disorder to the lumbar spine, 10% for loss of lumbar range of motion, and three percent for lumbar motor and sensory deficits resulting in 21% lumbar impairment and 10% for a specific disorder of the cervical spine, 12% for loss of cervical range of motion, six percent for cervical motor and sensory deficits resulting in a 26% cervical impairment. The claimant stated that she disputed the four percent IR in July 1998 and that she did not dispute the four percent IR before that because she did not have the medical records necessary to dispute the IR until that time. The Commission did not ask Dr. S to again evaluate the claimant.

In numerous decisions, the Appeals Panel has stated that a designated doctor may amend a report for a proper reason and within a reasonable time. See Texas Workers' Compensation Commission Appeal No. 960960, decided July 3, 1996. A proper reason may be the receipt of new information of a change in condition or diagnosis or when the first report is based on erroneous or incomplete facts. Texas Workers' Compensation Commission Appeal No. 970106, decided March 3, 1997. The reasonable period of time depends on the facts of the case (Texas Workers' Compensation Commission Appeal No. 970885, decided June 26, 1997), and the Appeals Panel has not stated that an amendment must be accomplished within a particular time (Texas Workers' Compensation Commission Appeal No. 970344, decided April 9, 1997). However, the Appeals Panel has held that 20 months (Texas Workers' Compensation Commission Appeal No. 980999, decided June 29, 1998), 32 months (Texas Workers' Compensation Commission Appeal No. 990058, decided February 24, 1999), three years (Texas Workers' Compensation Commission Appeal No. 980355, decided April 6, 1998), and three years and eight months (Texas Workers' Compensation Commission Appeal No. 982882, decided February 1, 1999) were not reasonable times. Personnel in the field office handling the claim did not ask the designated doctor to again evaluate the claimant. The hearing officer did not err in not directing that the claimant again be evaluated by the designated doctor as was requested by the claimant.

The 1989 Act sets forth a mechanism to help resolve conflicts concerning IR by according presumptive weight to the report of a doctor referred to as the designated doctor. Texas Workers' Compensation Commission Appeal No. 92495, decided October 28, 1992. If the Commission selects the designated doctor as was done in this case, the Commission shall base its determination of the claimant's IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. No other doctor's report is accorded the special presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. The hearing officer resolves conflicts in expert evidence and assesses the weight to be given to expert evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer determined that the report of the designated doctor is entitled to presumptive weight and that the great weight of the

other medical evidence is not contrary to the report of the designated doctor. Those determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Dorian E. Ramirez  
Appeals Judge

CONCUR IN RESULT:

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Gary L. Kilgore  
Appeals Judge